

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGIONS 13 AND 20**

NEXEO SOLUTIONS, LLC

and

**TRUCK DRIVERS, OIL DRIVERS,
FILLING STATION AND PLATFORM
WORKERS' UNION, LOCAL NO. 705, AN
AFFILIATE OF THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

**CASES 13-CA-46694
13-CA-62072
20-CA-35519**

and

**BROTHERHOOD OF TEAMSTERS AND
AUTO TRUCK DRIVERS, LOCAL NO. 70
OF ALAMEDA COUNTY, AFFILIATED
WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

**JOINT MOTION TO SEVER CASES, WITHDRAW PENDING EXCEPTIONS AND
REMAND CASES 13-CA-46694 AND 13-CA-62072 TO THE REGIONAL DIRECTOR**

The undersigned, Counsel for the General Counsel, Nexeo Solutions (Respondent) and Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local No. 705, An Affiliate of the International Brotherhood of Teamsters (Charging Party 705), pursuant to Section 102.47 of the Board's Rules and Regulations, as amended, hereby file this joint motion requesting to sever Cases 13-CA-46694 and 13-CA-62072 from Case 20-CA-35519, withdraw the pending Exceptions filed by Counsel for the General Counsel, Respondent and Charging Party 705 in Cases 13-CA-46694 and 13-CA-62072, and that the Board remand Cases 13-CA-

46694 and 13-CA-62072 to the Regional Director of Region 13 for the purpose of approving the parties' Non-Board Settlement based upon the following:¹

1. On November 30, 2011, the Acting Regional Director for Region 13 issued an Order Consolidating Cases, Consolidated Amended Complaint and Notice of Hearing in Cases 13-CA-46694 and 13-CA-67072². The complaint, as amended, alleged that Respondent, as an alleged perfectly clear successor employer, violated Sections 8(a)(1) and (5) of the Act by making unilateral changes to employees employed at Respondent's facility in Willow Springs, Illinois who are represented by Charging Party 705 ("the Willow Springs Unit") terms and conditions of employment, including changes to the health insurance plans and retirement benefit plans by which employees were covered as employees of the predecessor Employer, Ashland, Inc. ("the predecessor") and the overtime, vacation pay and hours of work guarantee policies of the predecessor. The complaint, as amended, further alleged that Respondent violated Sections 8(a)(1) and (5) of the Act by delaying its production of information to the Union necessary for, and relevant to the Union's performance of its duties as the exclusive bargaining representative of the Willow Springs Unit.

2. On November 30, 2011, the Regional Director for Region 20 issued a Complaint and Notice of Hearing in Case 20-CA-035519³. The complaint, as amended,

¹ In filing this Motion, Counsel request that Case 20-CA-35519 and the Exceptions related thereto remain outstanding for resolution by the Board.

² Cases 13-CA-46694 and 13-CA-67072 were filed by Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local No. 705, An Affiliate of the International Brotherhood of Teamsters the International (herein referred to as "Charging Party 705").

³ Case 20-CA-035519 was filed by the Brotherhood of Teamsters and Auto Truck Drivers, Local No. 70 of Alameda County, Affiliated with the International Brotherhood of Teamsters (herein referred to as "Charging Party Local 70").

alleged that Respondent, as an alleged perfectly clear successor, violated Sections 8(a)(1) and (5) of the Act by making unilateral changes to employees employed at Respondent's facility in Fairfield, California who are represented by Charging Party Local 70 ("the Fairfield Unit") terms and conditions of employment, including changes to the health insurance and retirement plans, and the seniority rights employees had as employees of the predecessor.

3. On February 3, 2012, Cases 13-CA-46694, 13-CA-67072, and 20-CA-035519 were consolidated and scheduled for hearing in Chicago and San Francisco. Because portions of both complaints were based on a common legal theory involving Respondent's purchase sale agreement, all three cases were heard by Administrative Law Judge William Kocol (herein referred to as "the ALJ") and a joint record was developed. On April 2-4, 2012, Cases 13-CA-46694 and 13-CA-67072 were tried in Chicago, Illinois. On May 7 and 8, 2012, Case 20-CA-035519 was tried in San Francisco, California.

4. On August 30, 2012, the ALJ issued a decision finding that Respondent was not a perfectly clear successor and, because it was not, Respondent did not violate the Act by implementing in both units different healthcare and retirement benefit plans than those under which the employees were covered as employees of the predecessor. The ALJ found that Respondent, as a *Burns* successor, violated the Act in making the other alleged unilateral changes. The ALJ also found that Respondent unlawfully delayed its production of two of three documents requested by Charging Party 705 but that it had timely produced the third⁴.

⁴ In Cases 13-CA-46694 and 13-CA-62072, the ALJ found that Respondent made unilateral changes to the employees' overtime policy but inadvertently failed to conclude that it violated the Act and did not provide a

5. On October 18, 2012, Counsel for the General Counsel and the Charging Parties, respectively, filed Exceptions and briefs in support to their Exceptions to the ALJ's dismissal of portions of the complaints. Also, on October 18, 2012, Respondent filed Exceptions and a brief in support of its Exceptions to portions of the ALJ's findings.

6. On November 29, 2012, Counsel for the General Counsel, Charging Parties and Respondent filed answering briefs to the parties' Exceptions.

7. On December 13, 2012, Counsel for the General Counsel, Charging Parties and Respondent filed reply briefs in response to the answering briefs.

8. On October 21, 2013 Charging Party 705 informed Counsel for the General Counsel that it had reached a non-Board settlement resolving the issues in Cases 13-CA-46694 and 13-CA-62072. Specifically, Charging Party 705 and Respondent have agreed to a new collective-bargaining agreement which includes, among other things, the restoration of the employees' former health care benefits and overtime pay policy. The retirement benefits, vacation pay and work guarantee policy have been resolved in the collective bargaining agreement to the satisfaction of Charging Party 705. The settlement effectuates the purpose and policies of the Act in that it resolves the Complaint allegations specific to Cases 13-CA-46694 and 13-CA-62072.

9. Based on this pending non-Board resolution of the issues underlying Cases 13-CA-46694 and 13-CA-62072, Charging Party 705, Respondent and Counsel for the General Counsel request that these cases be severed from Case 20-CA-35519. Counsel for the General Counsel, Charging Party 705 and Respondent further request to withdraw their Exceptions to the extent that they relate solely to Cases 13-CA-46694 and 13-CA-

remedy for the violation. See Counsel for Acting General Counsel's Brief in Support of Exceptions p.89; (Exceptions 9,26-29 and 29).

62072 and that these cases be remanded to the Regional Director of Region 13 for resolution of the non-Board settlement. Counsel for the General Counsel, Charging Party 705 and Respondent request that the respective Exceptions relating to Case 20-CA-35519 remain for separate resolution by the Board.

10. Specifically, Counsel for the General Counsel and Charging Party 705 request that the following Exceptions filed in Cases 13-CA-46694 and 13-CA-62072 by Counsel for the General Counsel be withdrawn as follows:

- a. Exceptions 5-7, 9-11, 26-27, 29-30 and 32 withdrawn in their entirety;
- b. Exception 4 is withdrawn only with regard to the ALJ's finding that Respondent never misled Teamsters Local 705 represented employees into believing their benefits would be identical as opposed to comparable in the aggregate to the ones enjoyed at the predecessor Employer, Ashland. The Exception with regard to Teamsters Local 70 represented employees remains for resolution by the Board.
- c. Exception 23 is withdrawn only with regard to the ALJ's finding that the General Counsel did not establish that Respondent was obligated to first bargain with Charging Party 705 before it offered employment upon the terms it set forth in the mid-February 2011 employment offer letters. The Exception with regard to Respondent's duty to bargain with Charging Party Local 70 remains for resolution by the Board.
- d. Exception 28 is withdrawn only to the extent that the ALJ failed to conclude, as a matter of law, that Respondent violated Sections 8(a)(1) and (5) of the Act, as alleged, by implementing changes to Charging Party 705's represented employees' health and pension benefits without first bargaining to agreement or good-faith impasse with Charging Party 705. The Exception with regard to Respondent's duty to bargain

with Charging Party Local 70 represented employees remains for resolution by the Board.

e. All other Exceptions filed by Counsel for the General Counsel remain for resolution by the Board.

11. Charging Party Local 705 withdraws its Exceptions filed in Cases 13-CA-46694 and 13-CA-62072 in their entirety.

12. Respondent requests that the following Exceptions which it filed in Cases 13-CA-46694 and 13-CA-62072 be withdrawn as follows:

a. Exceptions 8-9, 23-26 and 30-34 are withdrawn in their entirety.

b. Exception 18 is withdrawn only to the extent of the ALJ's finding that the case did not involve a situation where it was not clear that the Company had a duty to bargain with Local 705. The Exception with regard to the ALJ's findings as it relates to Charging Party Local 70 remains for resolution by the Board.

c. Exception 29 is withdrawn only to the extent of the ALJ's failure to find that the Company satisfied any duty it could be found to have had to consult or bargain with Local 705. The Exception with regard to the ALJ's finding as it relates to Charging Party Local 70 remains for resolution by the Board.

d. Exceptions 35 and 36 withdrawn only to the extent that the ALJ's recommended remedy and order relate to alleged violations against Local 705 represented employees. The Exception with regard to the ALJ's recommended remedy and order relating to alleged violations against Local 70 represented employees remain for resolution by the Board.

13. In requesting withdrawal of the above Exceptions and remand of Cases 13-CA-46694 and 13-CA-62072 to Region 13, Counsel for the General Counsel, Respondent and Charging Party 705 request that the Board utilize the record adduced at the hearings in Chicago to the extent that the evidence in that record applies and is relevant to the resolution of Case 20-CA-35519.

Dated at Chicago, Illinois, this 21st day of February 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Joint Motion to Sever Cases, Withdraw Pending Exceptions and Remand Cases 13-CA-46694 and 13-CA-62072 to the Regional Director has been filed electronically with the Office of the Executive Secretary of the National Labor Relations Board on this 21st day of February 2014, and true and correct copies have been served on the parties in the manner indicated below on that same date.

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